

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

NO. CR19-010RSM

Plaintiff,

V.

HUAWEI DEVICE CO., LTD., and
HUAWEI DEVICE USA, INC.,
Defendants.

**PROTECTIVE ORDER PURSUANT TO
SECTION 4 OF CLASSIFIED
INFORMATION PROCEDURES ACT
AND FEDERAL RULE OF CRIMINAL
PROCEDURE 16(d)(1)**

This matter has come before the Court on the Government's Classified *In Camera*, *Ex Parte* Motion for a Protective Order Pursuant to CIPA Section 4 and Fed. R. Crim. P. 16(d)(1) ("Government's Motion for a Protective Order"). By its motion, the government requested that the Court, pursuant to CIPA § 4, Fed. R. Crim. P. 16(d)(1), and the applicable law: (1) conduct an *in camera, ex parte* review of the government's submission; (2) authorize the government to withhold specified classified information from discovery; and (3) order that the government's motion and accompanying exhibits shall not be disclosed to the defense and shall be sealed and preserved in the records of the Court to be made available for any future review of these proceedings.

1 The Court, having carefully considered the government's motion and
 2 memorandum of law, and supporting materials filed therewith, **GRANTS** the
 3 Government's Motion for a Protective Order in its entirety.

4 The Court finds that the Government's Motion for a Protective Order was properly
 5 filed *in camera, ex parte* for this Court's review, pursuant to CIPA § 4 and Fed. R. Crim.
 6 P. 16(d)(1). The submission contains classified information that requires protection
 7 against unauthorized disclosure for reasons of national security such that its disclosure to
 8 the defense, or to the public, reasonably could be expected to cause damage to national
 9 security. The Court has conducted an *in camera, ex parte* review.

10 On the basis of the Court's independent review of the information and the
 11 arguments set forth in the Government's Motion for a Protective Order and the classified
 12 material in support of the motion, the Court finds that the classified information
 13 referenced in the government's motion and memorandum of law implicates the
 14 government's classified information privilege because the information is properly
 15 classified and its disclosure could cause serious damage to the national security of the
 16 United States. Furthermore, the Court finds that none of the classified information is
 17 exculpatory, *see Brady v. Maryland*, 373 U.S. 83 (1963), and that the information is not
 18 impeachment material. *See Giglio v. United States*, 405 U.S. 150 (1972).

19 Additionally, the Court finds that the "relevant and helpful" standard articulated in
 20 *United States v. Rovario*, 353 U.S. 53 (1957), *United States v. Yunis*, 867 F.2d 617 (D.C.
 21 Cir. 1989), and *United States v. Klimavicius-Viloria*, 144 F.3d 1249, 1261 (9th Cir. 1998),
 22 is the appropriate standard by which to analyze the discoverability of classified
 23 information where, as here, the government has properly invoked the classified
 24 information privilege. To this end, the Court finds that in applying the
 25 *Rovario/Yunis/Klimavicius-Viloria* standard, none of the classified information
 26 referenced in the government's motion is relevant and helpful to the defense.
 27 Furthermore, the Court finds that the national security damage from disclosure to the
 28 defense, as articulated in the *in camera, ex parte* motion and memorandum of law and

1 accompanying materials, outweighs the defendant's need for the information at issue.
2 This Order also applies to the government's discovery obligations under Federal Rule of
3 Criminal Procedure 16, and *Brady v. Maryland*, *Giglio v. United States* and their progeny
4 with regard to the information described herein.

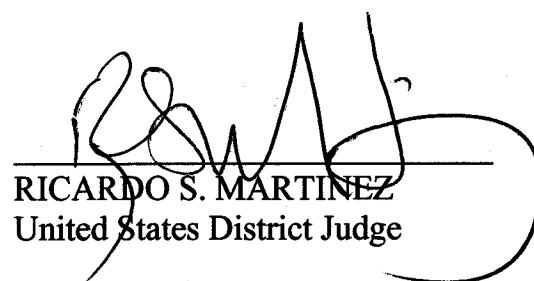
5 Accordingly, **IT IS ORDERED** that the government is authorized to withhold the
6 specified classified information outlined above from discovery to the defense.

7 **IT IS FURTHER ORDERED** that the government's motion, memorandum of
8 law, and the accompanying materials shall not be disclosed to the defense, and shall be
9 sealed and maintained in a facility appropriate for the storage of such classified
10 information by the Classified Information Security Officer as the designee of the Clerk of
11 Court, in accordance with established security procedures, for any future review, until
12 further order of this Court.

13 **IT IS SO ORDERED**, this 2 day of July, 2019.

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RICARDO S. MARTINEZ
United States District Judge



Presented by:

/s/ Todd Greenberg
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